

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1272 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GUJARAT INDUSTRIES

Versus

UNION OF INDIA

Appearance:

MR DV PARIKH for Petitioner

Ms. Avani S.Mehta for Respondents No. 1, 2

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

Date of decision: 21/03/98

ORAL JUDGEMENT

(Per : Balakrishnan,J.) :-

Rule. Ms. Avani S.Mehta, learned Standing Counsel waives service of notice of rule on behalf of the

respondents.

The petitioner challenges the order passed by the Customs, Excise & Gold (Control) Appellate Tribunal ('CEGAT' for short). The petitioner had filed an appeal before the CEGAT. An order was passed on 18.2.1997 by which the petitioner was directed to deposit Rs. 4.59 lacs as duty and on depositing the said amount, penalty of Rs.25,000/- was waived and its recovery was stayed, pending hearing of the appeal before CEGAT.

We have heard the learned Counsel for the petitioner and Ms. Avani S.Mehtal, learned Standing Counsel for the respondents.

Counsel for the petitioner contends that the Tribunal has not considered all the relevant factors and the petitioner's Unit was closed down and the petitioner was in financial difficulties. It has been stated in the impugned order that the contention of the petitioner regarding financial hardship is not established, though it is stated that the petitioner's Unit was shut down in May, 1992. Counsel for the petitioner contended that the petitioner has made out strong prima-facie case and the Tribunal ought to have held that the petitioner was not liable to make any pre-deposit. It is further submitted that the petitioner, in fact, had submitted an application for registration and such an application was pending for sometime and decision was taken subsequently. According to the petitioner, the period during which his application was pending, should be treated as period having licence, as the same was subsequently granted. In other words, the petitioner's contention is that once the registration is granted, it must relate to the date of application. The petitioner has also raised a contention that the demand was made belatedly and, therefore, it was time barred. All these matters are to be considered by the Tribunal.

Having regard to the facts and circumstances of the case, we direct that the petitioner shall deposit Rs.2 lacs on or before 30.4.1998. The impugned order passed by the Tribunal stands modified to the above extent only. The Tribunal shall consider the appeal in accordance with law. Rule is made absolute to the extent indicated hereinabove.

patel

